

1 THE LAW OFFICES OF RANDOLPH H. GOLDBERG  
2 RANDOLPH H. GOLDBERG, ESQ.  
3 BAR NO. 5970  
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8 Attorney for Debtor(s)

9  
10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

13 **RAY ORTIZ &**  
14 **MARYBETH ORTIZ**  
15 Debtor(s).

16 Chapter 13 Proceedings  
17 Case No.: 09-16845 -LBR

18 Date: 8/13/2009  
19 Time: 3:30 PM

20  
21 **MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS**  
**OF WELLS FARGO BANK NV NA PURSUANT TO 11 U.S.C. §506(a) AND §1322**

22 Comes Now the Debtor, **OLAY MAHALATH** (hereinafter the "debtor"), by and through  
23 THE LAW OFFICES OF RANDOLPH H. GOLDBERG, and respectfully moves this Court  
24 pursuant to 11 U.S.C. §506(a), and §1322, and Bankruptcy Rules 3012 and 9014.

25  
26 **STATEMENT OF FACTS**

27 1. Debtor filed the instant Chapter 13, Case Number **09-16845** on **APRIL 30,**  
28 **2009.**

29 2. As of the date of filing, debtor owned real property located at **3044 PHOENIX ST LAS**  
30 **VEGAS Nevada 89121** (hereinafter the "Subject Property").

31 3. Debtors have obtained a residential appraisal that places the value of the subject  
32 property at **\$156,000.00**.

33 4. At the time of filing the instant petition, the Subject Property was subject to

1 the following liens:

2           **WELLS FARGO HOME MORTGAGE (First Mortgage): \$236,059.00**

3           **WELLS FARGO BANK NV NA (Second Mortgage): \$36,565.00**

4       5. Therefore, on the date the instant bankruptcy was filed, no equity existed in  
5 the Subject Property above the claims of **WELLS FARGO BANK NV NA**

6       6. **WELLS FARGO BANK NV NA's** claim was wholly unsecured on the petition  
7 date and if the Subject Property was sold at auction **WELLS FARGO BANK NV**  
8  
9           **NA** would receive nothing.

10      7. Accordingly, the debtor requests that Your Honor find that **WELLS FARGO BANK**  
11 **NV NA'S** claim is unsecured and should be reclassified as a general unsecured claim to receive  
12 pro rata with other general unsecured creditors through the debtor's chapter 13 plan.

#### 13           LEGAL ARGUMENT

14      In *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002), the Court stated that a wholly unsecured  
15 lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to 11  
16 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2). Specifically, the Court  
17 held:

18      Section 506(a) divides creditors' claims into "secured...claims" and "unsecured  
19 claims." Although the conventional interpretation of "secured" might include any  
20 claim in which the creditor has a security interest in the debtor's property, §506(a)  
21 makes clear that the status of a claim depends on the valuation of the property. An  
22 allowed claim of a creditor secured by a lien on property in which the estate has  
23 an interest ... is a secured claim to the extent of the value of such creditor's interest  
24 in the estate's interest in such property ... and is an unsecured claim to the extent  
25 that the value of such creditor's interest ... is less than the amount of such allowed  
26 claim. To put it more simply, a claim such as a mortgage is not a "secured claim"  
27 to the extent that it exceeds the value of the property that secures it. Under the  
28 Bankruptcy Code, "secured claim" is thus a term of art; not every claim that is

1       secured by a lien on property will be considered a "secured claim." Here, it is plain  
2       that **WELLS FARGO BANK NV NA**'s claim for the repayment of its loan is an  
3       unsecured claim, because its deed of trust is junior to the first deed of trust, and the  
4       value of the loan secured by the first deed of trust is greater than the value of the  
house.

5       Accordingly, since **WELLS FARGO BANK NV NA**'s second mortgage claim is wholly  
6       unsecured (in that there is no extant equity above the first mortgage in the Subject Property), the  
7       claim should be reclassified by this Court as a general unsecured claim and share in whatever pro  
8       rata distribution is being received. **WELLS FARGO BANK NV NA** should also be stripped of  
9       its secured rights under Nevada State Law since no maintainable security interest in the subject  
10      property exists.

12       Furthermore, the Debtor is not required to file an adversary proceeding to strip the lien of  
13      its secured status. Debtor may "strip off" **WELLS FARGO BANK NV NA**'s consensual lien by  
14      motion. See *In re Williams*, 166 B.R. 615 (Bankr.E.D.Va.1994), *In re Fuller*, 255 B.R.  
15      300(Bankr.W.D.Mich.2000), *In re Hoskins*, 262 B.R. 693 (Bankr.E.D.Mich.2001), *In re King*,  
16      290 B.R. 641 (Bankr.C.D.Ill. 2003), *In re Millspaugh*, 302 B.R. 90 (Bankr.D.Idaho 2003), *Dickey*  
17      v. *Ben. Fin. (In re Dickey)* 293 B.R. 360 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R. 800  
18      (Bankr.S.D.Ohio 2003); *In re*  
19      *Sadala* 294 B.R. 180 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R. 544 (Bankr.W.D.N.Y.2003),  
20      *In re Robert*, 313 B.R. 545 (Bankr.N.D.N.Y.2004), *In re Bennett*, 312 B.R. 843  
21      (Bankr.W.D.Ky.2004).

1                   **CONCLUSION**

2                   Debtors respectfully request that the court:

3                   1. Determine that the first mortgage on the subject property exceeds the value;

4                   2. Determine that the **WELLS FARGO BANK NV NA** second mortgage claim is a  
5                   wholly unsecured claim and strip the lien from the subject property pursuant to 11  
6                   U.S.C. Section 506(a);  
7                   3. Reclassify the secured claim filed by **WELLS FARGO BANK NV NA** as a  
8                   general unsecured claim to be paid pro rata in the general unsecured pool of  
9                   Debtor's Chapter 13 Plan.  
10                  4. For such other and further relief which the Court deems just and proper.

11                  DATED this \_\_\_\_\_ of \_\_\_\_\_, 2009.

12                  THE LAW OFFICES OF  
13                  RANDOLPH H. GOLDBERG

14                  By: /s/RANDOLPH GOLDBERG/s/  
15                  RANDOLPH H. GOLDBERG, ESQ.  
16                  4000 S. Eastern Avenue, Suite 200  
17                  Las Vegas, Nevada 89119  
18                  Attorney for Debtor(s)

C &amp; R Appraisal Company 702-655-3546

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# Appraisal Report

**3044 PHOENIX STREET  
LAS VEGAS, NV 89121**

**C & R APPRAISAL COMPANY  
702-278-6099**

<b>Appraised Value as of:</b>	<b>APRIL 16, 2009</b>
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<b>\$</b>	<b>156,000</b>
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Style/Design:	<b>2-STORY</b>	Lot Size:	<b>7,000 Sq.Ft.</b>
Living Area (Sq.Ft.):	<b>2,550</b>	Neighborhood:	<b>FRANCISCO PARK</b>
Total Bedrooms:	<b>4</b>	Total Baths:	<b>2.5</b>
Year Built:	<b>1968</b>	Effective Age:	<b>41</b>
Condition:	<b>ASSUMED AVERAGE</b>	Date of Report:	<b>APRIL 21, 2009</b>

Client:	<b>RAY &amp; MARY BETH ORTIZ</b>		
Address:	<b>3044 PHOENIX STREET</b>		
City:	<b>LAS VEGAS</b>	State:	<b>NV</b>
Phone:	<b>Zip: 89121</b>		
E-mail:			

Name:	<b>TRISTA CATER</b>		
Designation:	<b>LICENSED RESID. APPRAISER</b>		
Certification or License #:	<b>01127</b>		
Expiration Date:	<b>6/30/09</b>	ST:	<b>NV</b>
E-mail:	<b>TRISTAS@COX.NET</b>		

Client File #:	Appraiser File #:
<b>090439</b>	

The value opinion expressed above is only valid in conjunction with the attached appraisal report. This value opinion may be subject to Hypothetical Conditions and/or Extraordinary Assumptions as indicated in the body of the report. A true and complete copy of this Summary Appraisal Report contains pages.



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## RESIDENTIAL APPRAISAL SUMMARY REPORT

### SUBJECT PROPERTY IDENTIFICATION

Property Address:	3044 PHOENIX STREET			City:	LAS VEGAS		
State:	NV	Zip Code:	89121	County:	CLARK		
Legal Description of Real Property:			LOT 21, BLOCK 16 OF FRANCISCO PARK #21				
Tax Assessor's Parcel #:	162-12-318-010			R.E. Taxes:	\$ 1,318.09	Tax Year:	09-10
Special Assessments:	\$ NONE			Current Owner of Record:	ORTIZ		
Occupancy:	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<input type="checkbox"/> Vacant	Current Occupant (if occupied):	ORTIZ		
Project Type (if applicable):	<input type="checkbox"/> Planned Unit Development		<input type="checkbox"/> Condominium	<input type="checkbox"/> Cooperative	<input type="checkbox"/>		
Home Owners' Association Membership Fees (if applicable):	\$ N/A			<input type="checkbox"/> per year	<input type="checkbox"/> per month		
Market Area Name:	FRANCISCO PARK			Map Reference:	55-34	Census Tract:	0012.00

### ASSIGNMENT

The purpose of this appraisal is to develop a Current opinion of Market Value (as defined elsewhere in this report).

Property Rights Appraised:  Fee Simple  Leasehold  Leased Fee  Other (describe) \_\_\_\_\_

Intended Use: THE INTENDED USE IS FOR THE COURT TO EVALUATE THE PROPERTY FOR A BANKRUPTCY FILING.

Intended User(s) (by name or type): THE INTENDED USER IS THE PROPERTY OWNER AND THE BANKRUPTCY ATTORNEY/COU

Client: RAY & MARY BETH ORTIZ Address: 3044 PHOENIX STREET, LAS VEGAS, NV 89121

Appraiser: TRISTA CATER Address: LAS VEGAS

### MARKET AREA DESCRIPTION

Location:	<input type="checkbox"/> Urban	<input checked="" type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Built Up:	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25-75%	<input type="checkbox"/> Under 25%
Growth Rate:	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Slow	Property Values:	<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input checked="" type="checkbox"/> Declining
Demand/Supply:	<input type="checkbox"/> Shortage	<input type="checkbox"/> In Balance	<input checked="" type="checkbox"/> Over Supply	Marketing Time:	<input type="checkbox"/> Under 3 Mos.	<input checked="" type="checkbox"/> 3-6 Mos.	<input type="checkbox"/> Over 6 Mos.
Typical One-Unit Housing Ranges:	Price: (\$)	Low 79	High 300	Predominant	100-150		
	Age: (yrs.)	Low 10	High 65	Predominant	35-45		
Present Land Use:	One-Unit: 65 %	2-4 Unit: 0 %	Multi-Unit: 10 %	Comm'l: 20 %	Vacant	5 %	
Change in Land Use:	<input checked="" type="checkbox"/> Not Likely	<input type="checkbox"/> Likely *	<input type="checkbox"/> Is Changing *	* To:			

#### Market Area Comments:

Sales have decreased in the last year while inventory continues to rise. Foreclosures and short sales are becoming more common in the current market. Sellers must be realistic when pricing properties and be willing to market aggressively. Listing and pending sales are emphasized and only the most current closed sales are considered reliable in this changing market.

### SALE / TRANSFER / LISTING HISTORY OF SUBJECT PROPERTY

My research:  Did  Did not reveal any prior sales or transfers of the subject property for the three years prior to the Effective Date of this appraisal. Data Source(s): MLS/COUNTY RECORDS

1st Prior Sale / Transfer	2nd Prior Sale / Transfer	3rd Prior Sale / Transfer
---------------------------	---------------------------	---------------------------

Date of Prior Sale / Transfer:	NONE	NONE
--------------------------------	------	------

Price of Prior Sale / Transfer:		
---------------------------------	--	--

Source(s) of Prior Sale / Transfer Data:	COUNTY RECORDS	COUNTY RECORDS
--	----------------	----------------

Analysis of sale / transfer history, any current agreements of sale or listing, and listing history (if relevant):

THERE WERE NO TRANSFERS OF THE SUBJECT PROPERTY WITHIN THE LAST 3 YEARS.

Client: RAY & MARY BETH ORTIZ Client File No.: Appraiser File No.: 090439

# RESIDENTIAL APPRAISAL SUMMARY REPORT

## SITE DESCRIPTION

<b>Dimensions:</b>	70 X 100	<b>Site Area:</b>	7,000 Sq.Ft.
<b>Zoning Classification:</b>	R-1	<b>Zoning Description:</b>	SINGLE FAMILY
<b>Zoning Compliance:</b>	<input checked="" type="checkbox"/> Legal	<input type="checkbox"/> Legal Non-Conforming (Grandfathered)	<input type="checkbox"/> Illegal
<b>Deed Restrictions:</b>	Are Covenants, Conditions, & Restrictions (CC&Rs) applicable? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		
Have the documents been reviewed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Ground Rent (if applicable) \$ /
<b>Comments:</b>			
<b>Highest &amp; Best Use, as improved, is the:</b>		<input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain)	
<b>Characteristics:</b>		<b>Topography:</b> BUILT-UP PAD	<b>Size:</b> TYPICAL FOR DEVELOPMENT
		<b>Shape:</b> RECTANGULAR	<b>Drainage:</b> ADEQUATE
		<b>View:</b> RESIDENTIAL	<b>Landscaping:</b> AVERAGE
<b>Other features:</b>	<input checked="" type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input type="checkbox"/> Cul de Sac <input type="checkbox"/> Underground Utilities <input type="checkbox"/>		
<b>Utilities:</b>	Public	Other	Provider/Description
Electricity:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Street: ASPHALT <input checked="" type="checkbox"/> <input type="checkbox"/>
Gas:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Curb/Gutter: CONCRETE <input checked="" type="checkbox"/> <input type="checkbox"/>
Water:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sidewalk: CONCRETE <input checked="" type="checkbox"/> <input type="checkbox"/>
Sanitary Sewer:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Alley: NONE/TYPICAL <input type="checkbox"/> <input checked="" type="checkbox"/>

**Is the property or the improvements located in a FEMA Special Flood Hazard Area?**  Yes  No

FEMA Flood Zone: X FEMA Map # 32003C 2170E FEMA Map Date: 9/02

**Site Comments:**

THIS SITE IS TYPICAL OF THE NEIGHBORHOOD IN TERMS OF SIZE AND APPEAL, WITH NO READILY APPARENT EASEMENTS OR ENCROACHMENTS. IN SHORT, A CONFORMING SITE THAT PROVIDES A SUITABLE SETTING.

### DESCRIPTION OF THE IMPROVEMENTS

<b>General Description:</b>	# of Units: 1 <input type="checkbox"/> + Accessory Unit	# of Stories: 2	Design (Style): 2-STORY
Type: <input checked="" type="checkbox"/> Detached	<input type="checkbox"/> Attached	Status: <input checked="" type="checkbox"/> Existing	<input type="checkbox"/> Proposed <input type="checkbox"/> Under Construction
Actual Age (years): 41	Effective Age (years): 41	Year Built: 1968	

**Exterior Description:**

Foundation:	CONCRETE	Exterior Walls:	SIDING
Roof Surface:	COMP. SHINGLE	Gutters & Downspouts:	NONE
Window Type(s):	SLIDING ALUM	Storm / Screens:	YES

**Heating System:** FAU

Car Storage:  None  Garage  Carport  Driveway (Surface: CONCRETE) Total # of Cars: 2

Livable area above grade contains: 7 Rooms, 4 Bedrooms, 2.5 Bath(s), and 2,550 Sq.Ft. of GLA

**Describe Additional Features and Improvements:**

THE PROPERTY IS ASSUMED TO BE IN OVERALL AVERAGE CONDITION. NO REPAIRS, RENOVATIONS OR REMODELING NEEDED.

Client: RAY & MARY BETH ORTIZ

Client File No.:

Appraiser File No.: 090439

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## RESIDENTIAL APPRAISAL SUMMARY REPORT

### SALES COMPARISON APPROACH TO VALUE

For the Sales Comparison Approach, the appraiser selects comparable sales that they consider the best matches to the subject in terms of physical characteristics, physical proximity, and time of sale. The appraiser then makes adjustments to the known sale price of each comparable sale to account for differences that are recognized by the market. For example, if the subject has a single bathroom but a comparable has 2, the comparable's sale price would be reduced by the attributable value given to the extra bathroom based on the market's reaction. Likewise, if a comparable sale has a smaller square footage than the subject, its sale price would be adjusted upward in the same manner. By weighting and reconciling these adjusted sales prices together, an opinion of value for the subject can be determined.

FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Address	3044 PHOENIX STREET LAS VEGAS, NV 89121	2703 NATALIE AVENUE APN: 162-12-311-035	2930 CARNELIAN STREET APN: 162-12-711-051	2584 CAPISTRANO AVENUE APN: 162-12-316-004
Proximity to Subject		0.14 miles NW	0.29 miles NE	0.19 miles W
Sale Price	\$ N/A	\$ 146,000	\$ 164,000	\$ 160,000
Sale Price / GLA	\$ /Sq.Ft.	\$ 57.25/Sq.Ft.	\$ 57.79/Sq.Ft.	\$ 81.22/Sq.Ft.
Data Source(s)	EXT.INS/TAXSTR	MLS/COUNTY RECORDS	MLS/COUNTY RECORDS	MLS/COUNTY RECORDS
ADJUSTMENT ITEMS	DESCRIPTION	DESCRIPTION +(-) \$ Adjust.	DESCRIPTION +(-) \$ Adjust.	DESCRIPTION +(-) \$ Adjust.
Sales or Financing	CASH	FHA	FHA	
Concessions	N/A	\$8,200		\$6,400
Date of Sale / Time	INSP. 4/09	COE 10/28/08	COE 12/19/08	COE 4/6/09
Rights Appraised	FEE SIMPLE	FEE SIMPLE	FEE SIMPLE	FEE SIMPLE
Location	AVERAGE	AVERAGE	AVERAGE	AVERAGE
Site	7,000 Sq.Ft.	7,000 Sq.Ft.	7,000 Sq.Ft.	7,400 SQ.FT.
View	RESIDENTIAL	RESIDENTIAL	RESIDENTIAL	RESIDENTIAL
Design (Style)	2-STORY	2-STORY	2-STORY	2-STORY
Quality of Construction	AVERAGE	AVERAGE	AVERAGE	AVERAGE
Age	41	43	39	41
Condition	ASSUMED AVG	AVERAGE	AVERAGE	AVERAGE
Above Grade	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths
Room Count	7 4 2.5	7 4 2.5	10 4 2.5	7 3 2.5
Gross Living Area	2,550 Sq.Ft.	2,550 Sq.Ft.	2,838 Sq.Ft.	-5,500 1,970 Sq.Ft. +11,500
Basement Total Area	N/A	N/A	N/A	N/A
Basement Finish Area	N/A	N/A	N/A	N/A
Functional Utility	AVERAGE	AVERAGE	AVERAGE	AVERAGE
Heating / Cooling	FAU/CENTRAL	FAU/CENTRAL	FAU/CENTRAL	FAU/CENTRAL
Energy Efficient Items	STANDARD	STANDARD	STANDARD	STANDARD
Garage / Carport	NONE	NONE	1-CARPORT	-2,000 2-GARAGE -10,000
Porch / Patio / Deck	PORCH,L/S	PORCH,L/S	PORCH,L/S	PORCH,L/S
	POOL	NONE	+8,000 POOL	POOL
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 8,000	<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -7,500	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 1,500
Adjusted Sale Price of Comparables		No: 5.5 %	Net 4.6 %	Net 0.9 %
		Gross 5.5 % \$ 154,000	Gross 4.6 % \$ 156,500	Gross 13.4 % \$ 161,500

#### Comments on the Sales Comparison Approach:

ALL SALES ARE TWO-STORY, SIMILAR QUALITY HOMES LOCATED IN THE SUBJECT SUBMARKET. SALE 1 IS THE SAME MODEL HOME AS SUBJECT AND IS INFERIOR DUE TO LACK OF AN INGROUND POOL. SALES 2 AND 3 ARE SUPERIOR TO SUBJECT DUE TO PARKING FACILITIES. SALE 2 IS ALSO SUPERIOR DUE TO GROSS LIVING AREA. SALE 3 IS INFERIOR DUE TO GROSS LIVING AREA. SEE ATTACHED ADDENDA..

Appraiser's Indicated Value by the Sales Comparison Approach: \$ 156,000

Client: RAY & MARY BETH ORTIZ

Client File No.:

Appraiser File No.: 090439

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## RESIDENTIAL APPRAISAL SUMMARY REPORT

### RECONCILIATION

**Final Reconciliation of the Approaches to Value:**

**THE SALES COMPARISON APPROACH BEST INDICATES MARKET VALUE AS DESCRIBED IN THE REPORT.**

This appraisal is made  "as is";  subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed;  subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed;  subject to the following required inspection(s) based on the Extraordinary Assumption that the following condition or deficiency does not require alteration or repair:

Subject is marketable "as is" and no repairs or alterations are required. See attached addenda.

This report is also subject to other Hypothetical Conditions or Extraordinary Assumptions as specified elsewhere in this report.

#### ATTACHMENTS

A true and complete copy of this report contains \_\_\_\_\_ pages, including all exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.

**Attached Exhibits:**

<input checked="" type="checkbox"/> Scope of Work	<input checked="" type="checkbox"/> Limiting Cond./Certifications	<input checked="" type="checkbox"/> Narrative Addendum	<input checked="" type="checkbox"/> Photograph Addenda
<input type="checkbox"/> Sketch Addendum	<input checked="" type="checkbox"/> Map Addenda	<input type="checkbox"/> Additional Sales	<input type="checkbox"/> Cost Addendum
<input type="checkbox"/> Flood Addendum	<input type="checkbox"/> Manuf. House Addendum	<input type="checkbox"/> Hypothetical Conditions	<input type="checkbox"/> Extraordinary Assumptions
<input type="checkbox"/> Extraordinary Assumptions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### OPINION OF VALUE

This Opinion of Value may be subject to other Hypothetical Conditions and / or Extraordinary Assumptions, if so indicated above. Based on the degree of inspection of the subject property as indicated below; the defined Scope of Work for this appraisal assignment; the attached Statement of Assumptions and Limiting Conditions; and the attached Appraiser's Certifications, my (our) Current Opinion of the Market Value (or value range), as defined elsewhere in this report, of the real property that is the subject of this report is: \$ 156,000 , as of: APRIL 16, 2009 , which is both the inspection Date and the Effective Date of this appraisal.

#### SIGNATURES

**APPRAISER**

**SUPERVISORY APPRAISER (if required)  
or CO-APPRAISER (if applicable)**



Appraiser Name: TRISTA CATER

Company: C & R APPRAISAL COMPANY

Phone: 702-278-6099 Fax:

E-mail: TRISTA5@COX.NET

Date of Report (Signature): APRIL 21, 2009

License or Certification #: 01127 State: NV

Designation: LICENSED RESID. APPRAISER

Expiration Date of License or Certification: 6/30/09

Inspection of Subject:  Interior & Exterior  Exterior Only  None

Date of Inspection: APRIL 16, 2009

Client: RAY & MARY BETH ORTIZ

Client File No.:

Appraiser File No.: 090439

Supervisory or  
Co-Appraiser Name:

Company:

Phone: Fax:

E-mail:

Date of Report (Signature):

License or Certification #:

State:

Designation:

Expiration Date of License or Certification:

Inspection of Subject:  Interior & Exterior  Exterior Only  None

Date of Inspection:

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## ASSUMPTIONS & LIMITING CONDITIONS

### SUBJECT PROPERTY

Property Address:	3044 PHOENIX STREET	City:	LAS VEGAS
State:	NV	Zip Code:	89121

#### STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.
- An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.
- In developing this appraisal, the appraiser has incorporated only the Sales Comparison approach. The appraiser has excluded the Cost and Income approaches. The appraiser has determined that this appraisal process is not so limited that the results of the assignment are no longer credible.

Client: RAY &amp; MARY BETH ORTIZ

Client File No.:

Appraiser File No.: 090439

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## DEFINITIONS & SCOPE OF WORK

### SUBJECT PROPERTY

Property Address:	3044 PHOENIX STREET	City:	LAS VEGAS
State:	NV	Zip Code:	89121

**DEFINITION OF MARKET VALUE \*:**

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

\* This definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 between July 5, 1990, and August 24, 1990, by the Federal Reserve System (FRS), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Office of Comptroller of the Currency (OCC). This definition is also referenced in regulations jointly published by the OCC, OTS, FRS, and FDIC on June 7, 1994, and in the Interagency Appraisal and Evaluation Guidelines, dated October 27, 1994.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

**Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):**

Client: RAY &amp; MARY BETH ORTIZ

Client File No.:

Appraiser File No.: 090439

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## CERTIFICATIONS

### SUBJECT PROPERTY

Property Address:	3044 PHOENIX STREET		City:	LAS VEGAS	
State:	NV	Zip Code:	89121	County:	CLARK

**APPRAISER'S CERTIFICATION**

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

**Additional Certifications:****SIGNATURES****APPRAISER****SUPERVISORY APPRAISER (if required)  
or CO-APPRAISER (if applicable)**


Appraiser Name: TRISTA CATER

Company: C &amp; R APPRAISAL COMPANY

Phone: 702-278-6099 Fax:

E-mail: TRISTA5@COX.NET

Date of Report (Signature): APRIL 21, 2009

License or Certification #: 01127

State: NV

Designation: LICENSED RESID. APPRAISER

Expiration Date of License or Certification: 6/30/09

Inspection of Subject:  Interior & Exterior  Exterior Only  None

Date of Inspection: APRIL 16, 2009

Supervisory or  
Co-Appraiser Name:

Company:

Phone: \_\_\_\_\_ Fax:

E-mail:

Date of Report (Signature):

License or Certification #: \_\_\_\_\_ State: \_\_\_\_\_

Designation:

Expiration Date of License or Certification:

Inspection of Subject:  Interior & Exterior  Exterior Only  None

Date of Inspection:

Client:

Client File No.:

Appraiser File No.: 090439

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**Supplemental Addendum**

File No. 090439

Client	RAY & MARY BETH ORTIZ			
Property Address	3044 PHOENIX STREET			
City	LAS VEGAS	County	CLARK	
Client	RAY & MARY BETH ORTIZ		State	NV Zip Code 89121

**URAR: Neighborhood Market Factors**

Las Vegas has a tourist-based economy. The service industry, which includes hotels, gaming, and recreation, accounts for over 30% of the employment within the city. Nellis Air Force Base, the Nevada Test Site, and several industrial and manufacturing plants are other main sources of employment. Also included are the secondary levels of support employment that are typical for a community with the size and population of the Las Vegas area. Growth in the Las Vegas valley remains constant adding to employment stability, and in turn, adding to the city's appeal.

Most of the competition for the subject will come from new tract development. Due to the tremendous growth in the Las Vegas Valley, new development will directly compete with both existing and other new development. The subject neighborhood is consistent with other competitive neighborhoods within the Las Vegas Valley and demonstrates a similar overall marketability to those areas.

**URAR: Sales Comparison Comments**

After all adjustments were made, a reasonable range of indicated values was found. None of the sales stands well alone as an indicator of value, but collectively they support each other and the value conclusion. Gross and net percentage adjustments are small and attest to the comparability of the sales.

This submarket was searched extensively and the comparable sales selected are considered the most similar to the subject in the current time frame. Any comparable which sold/closed escrow more than six months from the date of inspection was used due to a lack of any better/more recent sales in this submarket. Furthermore, any dated sale used is still a reliable indicator of current market value. All of the comparable sales are from within the subject subdivision or from the most proximate competing market areas. All line item adjustments are either market extracted and represent what informed purchasers are willing to pay for those items, or, when ideal "matched pair" sales are unavailable and no market extraction is possible, adjustments are derived from the cost new of the item, less all forms of depreciation. No value has been assigned to any personal property or any fixture not permanently attached.

In order to develop a reasonable analysis for the value of the property, a review of sales data from several sources was conducted. This investigation included the Multiple Listing Service as well as the county records and appraiser's files. Competing listings were also reviewed to determine the current competition and establish the upper limits of value in this submarket. The information provided herein is deemed to be accurate based on the sources cited.

**URAR: Final Reconciliation**

Greatest weight has been placed on the Sales Comparison Analysis as the actions of buyers and sellers are reflected therein. There is insufficient rental data to produce consistent conclusions about market rent and gross rent multipliers and, therefore, the Income Approach was omitted. I am aware of the changes made by USPAP to the appraiser's certification and will abide by those changes. I have no bias in respect to the subject property.

**Photograph Addendum**

Client	RAY & MARY BETH ORTIZ		
Property Address	3044 PHOENIX STREET		
City	LAS VEGAS	County	CLARK
		State	NV Zip Code 89121



FRONT VIEW OF SUBJECT PROPERTY



STREET VIEW

**Comparable Photo Page**

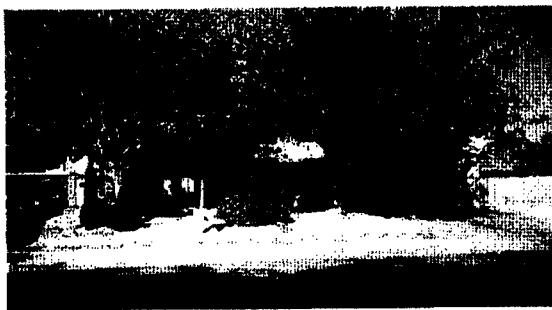
Client	RAY & MARY BETH ORTIZ			
Property Address	3044 PHOENIX STREET			
City	LAS VEGAS	County	CLARK	
		State	NV	Zip Code 89121
Client	RAY & MARY BETH ORTIZ			



**Comparable 1**  
2703 NATALIE AVENUE



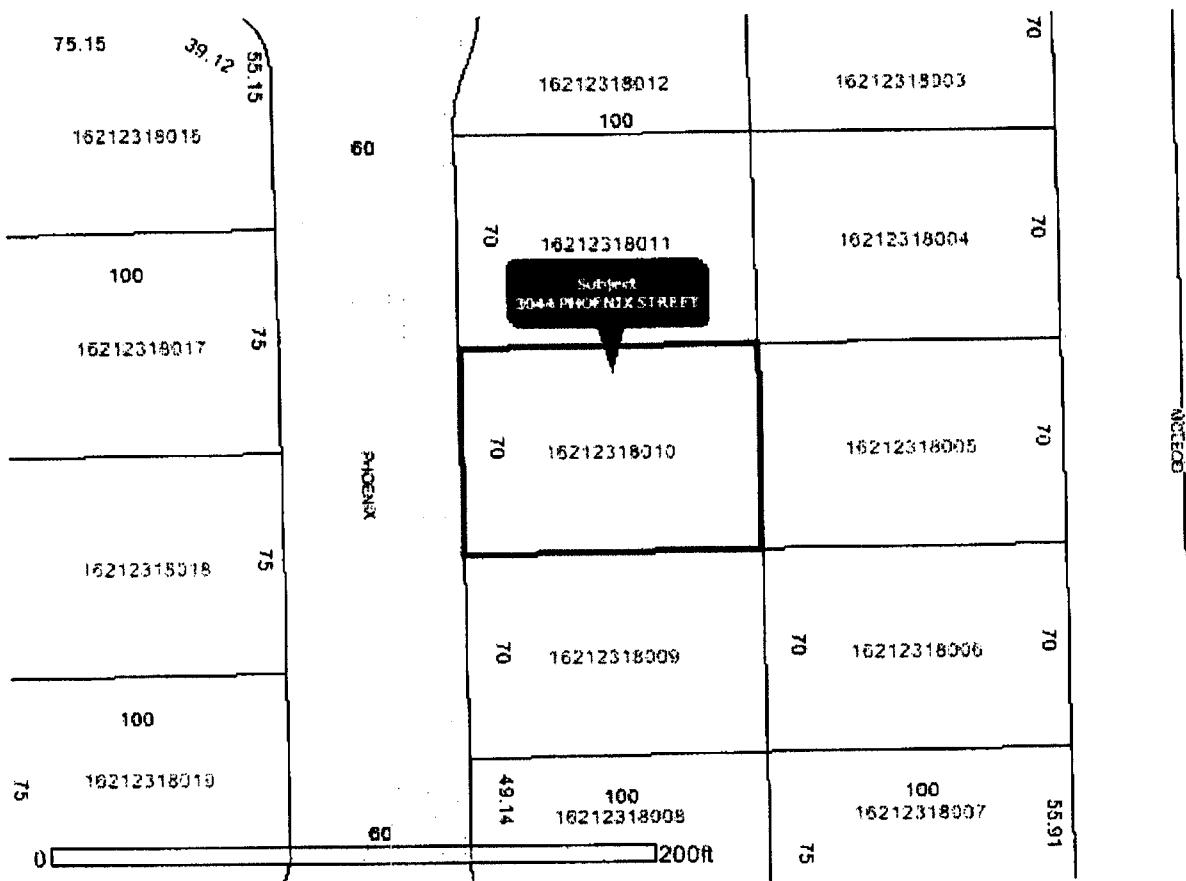
**Comparable 2**  
2930 CARNELIAN STREET



**Comparable 3**  
2584 CAPISTRANO AVENUE

**Site Map**

Client	RAY & MARY BETH ORTIZ		
Property Address	3044 PHOENIX STREET		
City	LAS VEGAS	County	CLARK
Client	RAY & MARY BETH ORTIZ	State	NV
		Zip Code	89121



**Location Map**

Client	RAY & MARY BETH ORTIZ				
Property Address	3044 PHOENIX STREET				
City	LAS VEGAS	County	CLARK		
Client	RAY & MARY BETH ORTIZ	State	NV	Zip Code	89121



## LICENSE

### APPRaiser LICENSE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to certify that: IRISIA R CALIER

License Number: A 0901127-RIS

Is duly authorized to act as a [REDACTED] NOTIFICATION APPRAISER from the issue date to the expiration date at the business address stated here in, unless the license is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: July 13, 2007

Expiry Date: June 30, 2010

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, to whom of the authorities vested in it by Chapter 68C of the Nevada Revised Statutes, has caused this license to be issued with its seal (printed) thereon. This license must be conspicuously displayed in place of business.

FOR: IRISIA ROBIN CALIER & R APPRAISERS LLC

1055 HEAVEN ROLLING MEADOWS

LAS VEGAS, NV 89130

CARL J. ANDERSON

